

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on February 19, 2003 at 8:05 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. George Everett (R)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Michael Lange (R)  
Rep. Bruce Malcolm (R)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. John Parker (D)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Scott Sales (R)  
Rep. Ron Stoker (R)  
Rep. Bill Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Pamela Schindler, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of the content it refers to.

**Committee Business Summary:**

Hearing & Date Posted: HB 460, HB 127, HB 295, HB 639, HB 654, HB 670, 2/12/2003

Executive Action: HB 242-Tabled, HB 654-Tabled, HB  
639-Do Pass, HB 327-Do Pass As  
Amended

**HEARING ON HB 295**

**Sponsor:** REP. JOHN PARKER, HD 45, Great Falls, Montana

**Opening Statement by Sponsor:**

REP. PARKER opened the hearing on HB 295 by stating to the Committee that he is now the sponsor of this bill.

The three main issues that this bill seeks to address are to take the drunkest drivers who usually cause the most serious bodily accidents and who are also the most repeat offenders and subsequently charge them with a higher offense. This bill will also raise the penalty for those convicted of these charges.

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 32}***

**Proponents' Testimony:**

Jim Kembel, Montana Chiefs of Police, Montana Police Protective Association, rose in support of this bill.

***{Tape: 1; Side: A; Approx. Time Counter: 32 - 36}***

Brant Light, Cascade County Attorney, Montana County Attorneys Association, rose in support of this bill. Mr. Light stated, "This bill attacks the worst of the worst drunk drivers, if an offender is drunk and driving and on parole or probation, they should be charged with a felony." Currently with a BAC of 0.30, the drunk driver is only charged with a misdemeanor.

***{Tape: 1; Side: A; Approx. Time Counter: 36 - 94}***

Beda Lovitt, Montana Medical Association, stated that the organization she represents is in full support of this bill. The physicians in the Montana Medical Association do not want "the business, they don't want to see the victims of the drunk drivers."

***{Tape: 1; Side: A; Approx. Time Counter: 94 - 103}***

**Bill Muhs, Mothers Against Drunk Driving**, stated that the victims of drunk drivers don't want to hear that drunk drivers commit only negligent homicide. This organization believes that someone who kills is not only negligent. Mr. Muhs stated that Montana is only one of four states to not have this presently in statute.

**{Tape: 1; Side: A; Approx. Time Counter: 103 - 157}**

**REP. JENT, HD 29, Bozeman, Montana**, stated to the Committee that this bill would properly recognize those drivers that have no respect for other drivers. Rep. Jent is in support of this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 157 - 174}**

**Mike Barrett, Poet**, spoke on behalf of this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 174 - 239}**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

**REP. PARKER** stated that this bill addresses the core problem with drunk drivers. He related a story to the Committee about a drunk driver he prosecuted for negligent homicide and then had to prosecute this driver again for the same offense.

**{Tape: 1; Side: A; Approx. Time Counter: 239 - 279}**

#### **HEARING ON HB 460**

NOTE: Due to a scheduling miscommunication, HB 460 was heard by the Committee on Tuesday, February 18, 2003, the preceding day. Proponents Testimony, Informational Testimony and Questions from the Committee was the testimony heard.

**Opponents' Testimony:**

**Morgan Sheets, Montana NARAL**, stated to the Committee that this bill is about protecting patient's rights and not about abortion. Ms. Sheets and her organization believes that this is another attack on women's reproductive rights. In her testimony, **Ms. Sheets** stated that since abortion has been legalized, no one has died from abortion procedures in the United States; and in

Montana, no one has ever died from an abortion procedure. Further, the record shows that of the abortions done, less than 1% have complications.

***{Tape: 1; Side: A; Approx. Time Counter: 279 - 369}***

**Jeri Duran, Intermountain Planned Parenthood**, stated to the Committee that HB 460 is a "trap bill" and the proponents will use fear tactics in order to get this bill passed. In reference to the term "post abortion trauma syndrome," **Ms. Duran** contends that this is not a medical diagnosis. The emotion that is most reported is relief by the women receiving an abortion. **Ms. Duran** also stated that an eight-week-old fetus cannot feel pain.

***{Tape: 1; Side: A; Approx. Time Counter: 369 - 451}***

**Rebecca Howell, Intermountain Planned Parenthood**, stated that this bill is anti-choice propaganda. In subsequent testimony, **Ms. Howell** explained to the Committee the medications that may be given to a woman during an abortion procedure and whether or not those medications may reach the fetus.

***{Tape: 1; Side: A; Approx. Time Counter: 451 - 500}***

**David Healow, Physician**, stated to the Committee that this bill would obstruct the provision of quality medical care to the woman seeking an abortion in Montana. The determination of fetal pain is problematic and there are no established methods for dealing with the fetal pain experience. Dr. Healow continued to discuss the issues that Dr. Zelinsky brought forth regarding pain and circumcision, medications that are given to the woman and that subsequently reach the fetus, general anaesthesia not being used and the informed consent accessibility for the women.

***{Tape: 1; Side: B; Approx. Time Counter: 0 - 100}***

**Stacy James, Intermountain Planned Parenthood**, stated to the Committee that this bill targets the most poor, rural and young among women seeking abortions. Ms. James also addressed the following issues: when the abortions are performed; the 24-hour waiting period; increased travel costs; and the fact that most of the women IMPP provides services already have two or more children at home.

***{Tape: 1; Side: B; Approx. Time Counter: 100 - 164}***

**Beth Brenneman, ACLU**, stated to the Committee that all lawsuits in Montana relating to abortion in the 1990's have been enjoined by the State or Federal Supreme Court and deemed unconstitutional. If HB 460 is passed, in Ms. Brenneman's opinion, it would not be enforceable.

The issues that Ms. Brenneman addressed were the 24-hour waiting period; i.e., the hardship this waiting period would impose on the rural and poorer Montana women seeking abortions and medical privacy. Further, she discussed the questions regarding the unconstitutionality of Sections 3, 4 and 9 in HB 460.

***{Tape: 1; Side: B; Approx. Time Counter: 164 - 362}***

**Patti Keebler, Montana Democratic Party**, rose in opposition to HB 460. Contrary to the previous day's testimony given by REP. MORGAN regarding the Democratic Party's platform, she informed the Committee what her party's platform is.

***{Tape: 1; Side: B; Approx. Time Counter: 362 - 388}***

**Linda Gryczan, Montana Women's Lobby**, stated to the Committee, that her organization has seen this type of bill before and has opposed this before. In her opinion, HB 460 is medically unnecessary and unconstitutional.

***{Tape: 1; Side: B; Approx. Time Counter: 388 - 425}***

**Wade Sigorsky, Farmer, Doctorate in Politic Science/Political Theorist**, explained to the Committee his background in theory, how language constitutes our experience in the world and how it relates to feeling pain and communicating that pain.

***{Tape: 1; Side: B; Approx. Time Counter: 425 - 462}***

Note: There were numerous exhibits distributed to the Committee during the opponent's testimony. In order to compile them, they are grouped together for easier access for the reader.

**EXHIBIT (juh37a01)**

**EXHIBIT (juh37a02)**

**EXHIBIT (juh37a03)**

**EXHIBIT (juh37a04)**

**EXHIBIT (juh37a05)**

**EXHIBIT (juh37a06)**

**EXHIBIT (juh37a07)**

**EXHIBIT (juh37a08)**

**EXHIBIT (juh37a09)**

**EXHIBIT** (juh37a10)  
**EXHIBIT** (juh37a11)  
**EXHIBIT** (juh37a12)  
**EXHIBIT** (juh37a13)  
**EXHIBIT** (juh37a14)  
**EXHIBIT** (juh37a15)  
**EXHIBIT** (juh37a16)  
**EXHIBIT** (juh37a17)  
**EXHIBIT** (juh37a18)  
**EXHIBIT** (juh37a19)  
**EXHIBIT** (juh37a20)

**Questions from Committee Members and Responses:**

**REPS. RICE, STOKER, GUTSCHE, MORGAN, THOMAS, and EVERETT,** extensively questioned the opponents regarding issues of pain, general anesthesia, reflexes, thalamus development and the date of the video that was shown to Committee members. There were additional questions by the Committee members regarding why doctors are late in returning reports, and the abortion procedure itself.

**{Tape: 1; Side: B; Approx. Time Counter: 462 - 500}  
{Tape: 2; Side: A; Approx. Time Counter: 0 - 265}**

**Closing By Sponsor:**

**REP. MORGAN** closed the hearing on HB 460 by reading from the Science Law and Politics of Fetal Pain Legislation, Harvard Law Review, Volume 115, Section 7, dated May 2002, called: Fetal Pain Prevention Act.

The sponsor further stated that 30 years ago, Roe v. Wade would not have happened. The Committee was also informed that 70% of newly elected officials are pro-life. REP. MORGAN would also like Sections 9 and 10 to be amended to insert the current language on 50-20-215.

**{Tape: 2; Side: A; Approx. Time Counter: 265 - 500}  
{Tape: 2; Side: B; Approx. Time Counter: 0 - 40}**

**HEARING ON HB 654**

**Sponsor: REP. JOEY JAYNE, HD 73, Arlee, Montana**

**Opening Statement by Sponsor:**

**REP. JAYNE** opened the hearing on HB 654 by stating that there is a part of the law that deals with mental incompetency of the accused. Many of the accused suffer from a disease or mental defect, so the question arises as to their "fitness to proceed." Presently, there is no definition as to mental disease or defect in the MCA.

*{Tape: 2; Side: B; Approx. Time Counter: 40 - 153}*

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

**REPS. STOKER, RICE AND HARRIS** questioned the sponsor and Ms. Lovitt, Montana Psychiatric Association about the mental disease or deficit criteria, fitness to proceed criteria and the incarceration issues in this bill.

*{Tape: 2; Side: B; Approx. Time Counter: 153 - 308}*

Closing by Sponsor:

**REP. JAYNE** closed the hearing on HB 654 by stating that this bill clarifies "fitness to proceed" and that there is a companion bill defining mental disease or deficit that will be heard.

*{Tape: 2; Side: B; Approx. Time Counter: 308 - 332}*

HEARING ON HB 127

Sponsor: **REP. NANCY RICE-FRITZ, HD 69, Missoula, Montana**

Opening Statement by Sponsor:

**REP. RICE-FRITZ** informed the Committee that a hearing was already heard on this bill in House Business & Labor. This bill will clarify and re-vitalize the law presently in the statutes.

*{Tape: 2; Side: B; Approx. Time Counter: 332 - 360}*

Proponents' Testimony:

**Cort Jensen, State of Montana, Consumer Protection Office**, stated this bill will do five things as originally drafted. He listed the five things it would do.

**{Tape: 2; Side: B; Approx. Time Counter: 360 - 420}**

**Dal Smiley, Montana Motorcycle Safety Education Association, American Motorcycle Association**, stated that this bill will address the motorcycle "lemon law."

**{Tape: 2; Side: B; Approx. Time Counter: 420 - 447}**

**Doug Abelin, Montana Trailbike Riders Association**, supports the "lemon law" clause.

**{Tape: 2; Side: B; Approx. Time Counter: 447 - 454}**

**Vernon Bertelsen, Montana Senior Citizens Association**, rose in support of this bill.

**{Tape: 2; Side: B; Approx. Time Counter: 454 - 461}**

**Del Lundquist, AARP**, rose in support of HB 127.

**{Tape: 2; Side: B; Approx. Time Counter: 461 - 500}**

**Opponents' Testimony:**

**Riley Johnson, NFIB**, stated to the Committee that his organization is not strongly opposed; but wanted the Committee to address the language on Page 4, Lines 20 and 21.

**{Tape: 3; Side: A; Approx. Time Counter: 0 - 31}**

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. NOENNIG** put forth a question to Mr. Jensen regarding the amendment discussed by Mr. Riley.

**{Tape: 3; Side: A; Approx. Time Counter: 31 - 61}**

**Closing by Sponsor:**

**REP. RICE-FRITZ** closed the hearing on HB 127.



*{Tape: 3; Side: A; Approx. Time Counter: 61 - 62}*

**HEARING ON HB 639**

**Sponsor:** REP. JESSE LASLOVICH, HD 57, Anaconda, Montana

**Opening Statement by Sponsor:**

REP. LASLOVICH opened the hearing on HB 639 by stating that this bill was brought forth by the students of the University of Montana. This bill would provide an avenue of appeal for parking tickets issued and the fines incurred.

**EXHIBIT** (juh37a21)

*{Tape: 3; Side: A; Approx. Time Counter: 62 - 106}*

**Proponents' Testimony:**

Bill Johnston, University of Montana Campuses, informed the Committee that this bill would bring this fine/fee in line with other campuses for their review. The current parking fee is \$150 for students per semester.

*{Tape: 3; Side: A; Approx. Time Counter: 106 - 125}*

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

REP. HARRIS inquired of the sponsor if the purpose of the bill is to delegate the oversee from this body to another unit of the government.

*{Tape: 3; Side: A; Approx. Time Counter: 125 - 147}*

**Closing by Sponsor:**

REP. LASLOVICH closed the hearing on HB 639 by stating that the Board of Regents is the governing body over the University system.

*{Tape: 3; Side: A; Approx. Time Counter: 147 - 169}*

**HEARING ON HB 670**

**Sponsor:** REP. ROSALIE BUZZAS, HD 65, Missoula, Montana

**Opening Statement by Sponsor:**

**REP. BUZZAS** opened the hearing on HB 670 by stating that this bill would revise the Youth Access to Tobacco Products Control Act passed in 1993. This bill considers raising the retailer's application fee, raising the penalties and schedule for failing to obtain a retail license for tobacco sales, failure to post signs regarding sales of tobacco products to youth and for manufacture of tobacco products in violation of minimum size requirements.

The sponsor stated that one of every five deaths in Montana is tobacco-related for a total of approximately 1,400 Montana citizens. Montana youth have the 6th highest rate of tobacco use in the country. In Montana, 17% of eighth-graders smoke, 29% of 10th-graders smoke and 33% of 12th-graders smoke.

**REP. BUZZAS** spoke of the changes the bill would make, referring to Page 1, Line 17; Pages 2 and 3, Lines 26-30.

***{Tape: 3; Side: A; Approx. Time Counter: 169 - 327}***

**Proponents' Testimony:**

**Pat Melby, Montana Medical Association**, rose in support of this bill.

***{Tape: 3; Side: A; Approx. Time Counter: 327 - 340}***

**Jim Smith, American Cancer Society, Protect Montana Kids**, rose in support of this bill. **Mr. Smith** stated that the best way to deal with this serious health problem is to never start smoking.

**EXHIBIT** (juh37a22)

***{Tape: 3; Side: A; Approx. Time Counter: 340 - 377}***

**Opponents' Testimony:** None

**Informational Testimony:**

**Lee Baerlocher, State of Montana Department of Revenue**, informed the Committee that he will be available for questions.

*{Tape: 3; Side: A; Approx. Time Counter: 377 - 385}*

**Questions from Committee Members and Responses:**

REPS. EVERETT, NEWMAN, NOENNIG and RICE put forth questions to the sponsor by asking if the State laws would pertain to the Tribal reservations, the motivation in raising the application fee and if the money collected from fees would go into the General Fund, whereas the fines would go into the Special Revenue Fund. The final question addressed the issue of purchasing tobacco products over the internet.

*{Tape: 3; Side: A; Approx. Time Counter: 385 - 500}*

**PLEASE NOTE: TAPE 3 SIDE B WAS NOT UTILIZED DURING THE HEARING.**

*{Tape: 4; Side: A; Approx. Time Counter: 0 - 7}*

**Closing by Sponsor:**

REP. BUZZAS closed the hearing on HB 670 by stating "tougher fines work."

*{Tape: 4; Side: A; Approx. Time Counter: 7 - 31}*

REP. NOENNIG asked for and was granted a "point of personal privilege" by CHAIRMAN SHOCKLEY. The issue that was addressed concerned the Animal Cruelty Bill, apparently a comment was misinterpreted and REP. NOENNIG has received numerous e-mails and letters about the comment and his actions on the House floor regarding the way he voted for said bill.

CHAIRMAN SHOCKLEY then appointed a sub-committee to work on this bill. The members of this committee are REPS. RASER, MALCOLM AND PARKER. REP. NOENNIG will work with this Committee.

*{Tape: 4; Side: A; Approx. Time Counter: 31 - 106}*

**EXECUTIVE ACTION ON HB 654**

**Motion:** REP. NEWMAN moved that HB 654 DO PASS.

**Discussion:**

REP. NEWMAN informed the Committee that this bill is unnecessary.

REP. GALLUS stated that this bill is redundant.

Motion: REP. GALLUS moved that HB 654 BE TABLED.

Discussion:

REP. HARRIS questioned if there was a usable portion of the bill in Section 5, Page 3.

Vote: Motion that HB 654 BE TABLED carried 15-3 with REPS. GUTSCHE, HARRIS, and RASER voting no. (voice vote)

*{Tape: 4; Side: A; Approx. Time Counter: 106 - 151}*

EXECUTIVE ACTION ON HB 242

Motion: REP. HARRIS moved that HB 242 DO PASS.

Discussion:

REPS. GALLUS, RICE, LASZLOFFY, EVERETT, NOENNIG, GUTSCHE, THOMAS, GALLUS and SHOCKLEY discussed that this bill had been heard in previous sessions, passengers in vehicles would like to be able to drink, and whether the money will be received from the Federal Government.

Vote: Motion that HB 242 DO PASS failed 6-12 with REPS. HARRIS, PARKER, RASER, THOMAS, STOKER and NEWMAN voting aye. (roll call vote)

Vote: Motion that HB 242 BE TABLED AND THE VOTE REVERSED carried 12-6 with REPS. HARRIS, NEWMAN, PARKER, RASER, STOKER, and THOMAS voting no. (voice vote)

*{Tape: 4; Side: A; Approx. Time Counter: 151 - 298}*

EXECUTIVE ACTION ON HB 639

Motion: REP. GALLUS moved that HB 639 DO PASS.

Discussion: None

Vote: Motion that HB 639 DO PASS carried 15-3 with REPS. GUTSCHE, LASZLOFFY, and RICE voting no. (voice vote)

*{Tape: 4; Side: A; Approx. Time Counter: 298 - 321}*

EXECUTIVE ACTION ON HB 327

**Motion:** REP. HARRIS moved that HB 327 DO PASS.

**Motion:** REP. HARRIS moved that HB 327 BE AMENDED.

**Discussion:**

REPS. HARRIS explained the amendment proposed from February 17, 2003. This amendment will narrow the scope of the "open documents" policy regarding a public hazard developing resulting from the policy in question.

REPS. RICE, NOENNIG, NEWMAN, MALCOLM, SALES, STOKER, LASZLOFFY SHOCKLEY and GALLUS questioned REP. HARRIS about the McDonald's hot coffee lawsuit, conflicts that arise, and the retroactive results from plaintiffs determinations.

**Vote:** Motion that HB 327 BE AMENDED carried 16-2 with REPS. MALCOLM and RICE voting no. (voice vote)

**Motion/Vote:** REP. HARRIS moved that HB 327 DO PASS AS AMENDED. Motion carried 14-4 with REPS. EVERETT, LASZLOFFY, MALCOLM, and RICE voting no. (voice vote)

*{Tape: 4; Side: A; Approx. Time Counter: 321 - 500}*

*{Tape: 4; Side: B; Approx. Time Counter: 0 - 213}*

**ADJOURNMENT**

Adjournment: 11:46 A.M.

---

REP. JIM SHOCKLEY, Chairman

---

PAMELA SCHINDLER, Secretary

JS/PS

**EXHIBIT** (juh37aad)